

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ZACHARY R. GRAHAM,

Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF
HEALTH DIVISION OF VITAL RECORDS,

Defendant.

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Civil Action No. 21-846

District Judge Arthur J. Schwab

Magistrate Judge Maureen P. Kelly

MEMORANDUM ORDER

Plaintiff Zachary R. Graham (“Plaintiff”) is a state prisoner currently incarcerated at the State Correctional Institution at Greene (“SCI-Greene”) in Waynesburg, Pennsylvania.¹ Plaintiff initiated this matter by submitting a Motion and Declaration in Support of Motion to Proceed *in Forma Pauperis* (“IFP”) and Complaint, which were received by this Court on July 1, 2021. [ECF No. 1](#). The IFP motion was granted July 8, 2021, [ECF No. 3](#), and the Complaint was filed on July 11, 2021, [ECF No. 5](#).

In the Complaint, Plaintiff raises claims under the Civil Rights Act of 1871, 42 U.S.C. § 1983, Title II of the Americans with Disability Act (“ADA”), 42 U.S.C. § 12132, and the Rehabilitation Act (“RA”), 29 U.S.C. § 794(a), in relation to her attempts to change the gender marker on her birth certificate from “male” to “female.” [ECF No. 5 at 7](#).

On July 16, 2021, United States Magistrate Judge Maureen Kelly issued a Report and Recommendation recommending that Plaintiff’s claims be dismissed, *sua sponte*, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) as frivolous or malicious, and for failure to state a claim upon which relief may be granted. [ECF No. 8 at 1](#). The Magistrate Judge additionally

¹ Plaintiff has requested to be referred to using feminine pronouns and appellations. [ECF No. 6](#). As a matter of courtesy, this Court shall do so. [ECF No. 7](#).

recommended that Plaintiff be granted leave to amend her claims under the ADA and RA, as well as her Fourteenth Amendment claim. Id. Petitioner timely filed Objections on July 30, 2021. [ECF No. 11](#).

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, [ECF No. 8](#), and Plaintiff's Objections thereto, [ECF No. 11](#), the following Order is entered:

AND NOW, this 21st day of April, 2022,

IT IS HEREBY ORDERED that the Complaint, [ECF No. 5](#), is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). Plaintiff may file an amended complaint with respect to her claims arising under the ADA and RA, as well as her the Fourteenth Amendment Equal Protection claim. An amended complaint is due on or before May 18, 2022. Failure to file an amended complaint by that date may result in dismissal of this case.

IT IS FURTHER ORDERED that Plaintiff's Objections, [ECF No. 11](#), are OVERRULED and DISMISSED.

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation, [ECF No. 8](#), as it is supplemented by this order, is adopted as the opinion of this Court.

BY THE COURT:

s/ Arthur J. Schwab
ARTHUR J. SCHWAB
UNITED STATES DISTRICT JUDGE

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge

ZACHARY R. GRAHAM
NP-2097
SCI Greene
175 Progress Drive
Waynesburg, PA 15370